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Attorney for Defendant Michael Post

2011 OCT 12 PM 3:02  
CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

FILED

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DAVID WEISMAN, an individual,  
Plaintiff,  
vs.  
SANRIO FAR EAST COMPANY, a Japanese  
corporation, et al.  
Defendants.

Case No. LACV11-6033 GW/JC<sup>x</sup>

Michael Post's Answer, Conterclaim and  
Crossclaim

MICHAEL POST, an individual,  
Counter- Plaintiff,  
vs.  
DAVID WEISMAN, an individual,  
Counter-Defendant,

MICHAEL POST, an individual,  
Cross-Plaintiff,  
vs.  
SANRIO FAR EAST COMPANY, a Japanese  
corporation, et al.  
Cross-Defendants,

ADMISSIONS AND DENIALS

1. Defendant admits the allegations in paragraph 5.
2. Defendant admits that plaintiff brings this action pursuant to 17 USCA Sections 101 *et seq.*, and that this court has jurisdiction to hear cases alleging violations under Section

1 1338(a) of that statute, but denies that plaintiff's complaint states a valid claim for relief  
2 on that or any other basis.

- 3 3. Defendant admits that plaintiff brings this action pursuant to 28 USC Sections 2201 and  
4 2202, and that 28 USC Sections 1367(a) gives this court subject matter jurisdiction to  
5 hear cases seeking damages for violations of state law, but denies that plaintiff's  
6 complaint states a valid claim for relief on that or any other basis.
- 7 4. Defendant admits that he has held himself out as the owner of 100% Successor in Interest  
8 Rights with regard to Edie Sedgwick, but denies all of the remaining allegations of  
9 paragraph 40.
- 10 5. Defendant denies each and every allegation in paragraphs 4, 6 through 39, inclusive, and  
11 41.

12 **AFFIRMATIVE DEFENSES**

- 13 6. As a first affirmative defense, defendant alleges that the complaint fails to state a claim  
14 on which relief may be granted.
- 15 7. As a second affirmative defense, defendant alleges that the claims asserted in the  
16 complaint are barred by the statute of limitations.

17 **COUNTERCLAIM**

- 18 8. The court has supplemental jurisdiction of this counterclaim under 28 U.S.C. Section  
19 1367(a) because it arises out of the same transaction and occurrences alleged in the  
20 plaintiff's complaint so as to form a part of the same case or controversy within the  
21 meaning of Article III of the United States Constitution.
- 22 9. Defendant Michael Post was married to Edith Sedgwick Post, who is referred to in  
23 plaintiff's complaint as "Edie Sedgwick," when she died in 11/16/1971.
- 24 10. Defendant Michael Post is the sole successor-in-interest of Edie Sedgwick pursuant to  
25 California Civil Code Section 3344.1 as Edie Sedgwick's surviving spouse.
- 26 11. Defendant Michael Post filed his claim as successor-in-interest with the California  
27 Secretary of State on 02/07/1989.
- 28

1 12. Since Edie Sedgwick's death, Plaintiff David Weisman has made commercial use of Edie  
2 Sedgwick's name and likeness without Defendant Michael Post's permission in violations  
3 of Defendant Michael Post's common-law and statutory rights as successor-in-interest.

4 13. Plaintiff has substantially profited from the illegal use of Edie Sedgwick's name and  
5 likeness and as a direct and proximate result of plaintiff's violations Defendant Michael  
6 Post is entitled to damages and to disgorgement of Plaintiff's profits in amounts to be  
7 proven at trial, which are not currently ascertainable.

8 WHEREFORE, defendant prays judgment as set out below.

9 CROSSCLAIM AGAINST ALL CO-DEFENDANTS

10 14. The court has supplemental jurisdiction of this counterclaim under 28 U.S.C. Section  
11 1367(a) because it arises out of the same transaction and occurrences alleged in the  
12 plaintiff's complaint so as to form a part of the same case or controversy within the  
13 meaning of Article III of the United States Constitution.

14 15. At all times mentioned in plaintiff's complaint defendants were licensed by Michael Post  
15 or sub-licensed to use the name or likeness of Edie Sedgwick pursuant to a written  
16 contract with Michael Post.

17 16. The terms of the written contract provides that Defendants assume entirely the  
18 responsibility and liability for any and all damages resulting from infringement on third-  
19 parties' rights and that they would indemnify and save harmless Michael Post from and  
20 against any and all loss and expense that he might suffer or pay as a result of claims or  
21 suits due to or arising out of any injury.

22 17. Plaintiff's complaint alleges, among other things, that his rights were violated by  
23 Defendants' use of certain images of Edie Sedgwick and claims unspecified damages.

24 18. Any damages suffered by Plaintiff are embraced within the indemnification agreement in  
25 the contract between and among Michael Post and Defendants.  
26  
27  
28

1 19. If Plaintiff recovers a verdict against Michael Post as claimed in the complaint, this will  
2 have been brought about and caused solely by Defendants and not by reason of Michael  
3 Post's actions.

4 WHEREFORE, defendant prays judgment as follows:

5 **PRAYER**

6 Defendant prays that:

- 7 A. Plaintiff take nothing by its complaint;  
8 B. Plaintiff's complaint be dismissed with prejudice;  
9 C. Plaintiff's profits to be proven at trial;  
10 D. For general damages to be proven at trial;  
11 E. For special damages to be proven at trial;  
12 F. For injunctive relief;  
13 G. For statutory damages;  
14 H. Defendant be awarded his reasonable attorney's fees and expenses.  
15 I. Defendant be awarded his costs of suit.  
16 J. That if any judgment is entered in this action against Michael Post in favor of

17 Plaintiff, that Michael Post recover from and be indemnified by Defendants as specified in the  
18 crossclaim, above.

- 19 K. Defendant be granted any other and further relief that the Court deems just and  
20 proper.

21 Dated: 09/21/2011

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Attorney for Michael Post

NAME, ADDRESS AND TELEPHONE NUMBER OF ATTORNEY(S)

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

David Weisman, an individual,

PLAINTIFF(S),

v.

Sanrio Far East Company, a Japanese  
corporation et al.

DEFENDANT(S).

CASE NUMBER

LACV11-6033 GW/JLx

**PROOF OF SERVICE - ACKNOWLEDGMENT  
OF SERVICE**

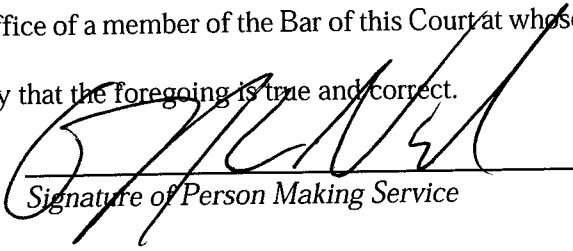
I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of Santa Barbara, State of California, and not a party to the above-entitled cause. On September 30, 2011, I served a true copy of Michael Post's Answer, Counterclaim and Crossclaim by personally delivering it to the person (s) indicated below in the manner as provided in FRCivP 5(b); by depositing it in the United States Mail in a sealed envelope with the postage thereon fully prepaid to the following: (list names and addresses for person(s) served. Attach additional pages if necessary.)

Place of Mailing: Santa Barbara, California

Executed on September 30, 2011 at Santa Barbara, California

Please check one of these boxes if service is made by mail:

- ☐ I hereby certify that I am a member of the Bar of the United States District Court, Central District of California.
- ☒ I hereby certify that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.
- ☒ I hereby certify under the penalty of perjury that the foregoing is true and correct.

  
 Signature of Person Making Service

**ACKNOWLEDGEMENT OF SERVICE**

I, \_\_\_\_\_, received a true copy of the within document on \_\_\_\_\_.

\_\_\_\_\_  
Signature\_\_\_\_\_  
Party Served